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COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

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SUMMARY RECORD OF THE 240th MEETING

Held at Headquarters, New York,
on Friday, 21 January 1994, at 10 a.m.

Chairperson: Ms. CORTI

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The meeting was called to order at 10.30 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 18 OF THE CONVENTION (continued)

Initial report of Libya (continued) (CEDAW/C/LIB/1 and Add.1)

1. At the invitation of the Chairperson, Mr. Omar (Libyan Arab Jamahiriya) took a place at the Committee table.

2. Mr. OMAR (Libyan Arab Jamahiriya), replying in the absence of Salma Rashid, Assistant Secretary of the General People's Congress and Secretary for Women's Affairs to questions on the initial report of the Libyan Arab Jamahiriya, said that within a short span of 25 years women had made great strides in the Libyan Arab Jamahiriya, especially in the light of the conditions that had prevailed in the region during that period.

3. The reservation of the Libyan Arab Jamahiriya concerning provisions of the Convention that were in conflict with Islamic law (the Shariah) had been a major concern of Committee members, and it was therefore important to clarify the attitude of Islam towards women.

4. One of the aims of Islam was to liberate human beings, both men and women, from all forms of servitude and exploitation. Islam had taken up the cause of women, prohibiting pre-Islamic practices such as the burying of girls alive, and strongly criticized even the expression of displeasure on the birth of a girl child. It had granted women the right to inherit, which they had not previously had, and the right to choose their husband and to keep their name; it also gave them the right to dispose freely of their property. The Koran extolled women who had attained high positions. Islam called for equality among all humans, both men and women; it permitted women to engage in all lawful business practised by men. In respect of worship, too, women had the same duties and rights as men.

5. Any differences that might appear in those areas were positive rather than negative, and neither involved discrimination against women nor impeded their development and advancement. An example was the woman's hereditary portion, which was half the man's share; the woman, however, received her share without any related obligations, while the man was subject to obligations that consumed his entire portion.

6. Such matters involved precepts which no Muslim, whether man or woman, could alter; violating them was tantamount to violating public order. That was perhaps the underlying reason for the reservation on the part of the Libyan Arab Jamahiriya and other Islamic States. Yet there was ample room for implementing the Convention and complying with its provisions. He believed that an objective dialogue would lead to mutual understanding and dispel the preoccupations of the Committee. In any case, he would pass on the Committee's concerns regarding the reservation.

7. It was natural that the report, being an initial report, dealt primarily with legislative aspects and general policy rather than addressing practical

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aspects. The practical side would perhaps be dealt with more fully in future reports.

8. The Great Green Document on Human Rights in the Age of the Masses, about which questions had been asked, had been published in document A/44/331. It affirmed the equality of men and women in all human activities. Copies of it would be provided to the Secretary for distribution to Committee members.

9. In table 2 of the report, the main heading in English, rather than the column heading, was correct: the comparison was between 1973 and 1984.

10. The recently created office of the Assistant Secretary for Women's Affairs within the General People's Congress had four divisions, dealing respectively with: information on women's achievements in the Libyan Arab Jamahiriya and the Arab world; women's affairs and women in development; public information and consciousness-raising; and relations with women's organizations abroad and participation in international conferences. In addition, coordinating offices had been set up throughout the country to assist women and monitor programmes for their advancement.

11. The Libyan Arab Jamahiriya agreed with the view of the members of the Committee that articles 2 to 5 of the Convention must be discussed in conjunction with one another. With regard to article 2, the principle of equality was established in the Koran, as well as in the Constitutional Declaration, the declaration establishing the people's authority, the Great Green Document on Human Rights and the freedom consolidation act. Most Libyan legislation made no distinction between men and women. The principle of equality had frequently been reaffirmed by the Libyan supreme court; it applied in all public institutions, legislative, executive or judicial, whether or not the law explicitly so provided.

12. Libyan law had not merely established the principle of equality between men and women, but had incorporated it into a set of measures designed to guarantee its practical realization, including the right of recourse to judicial proceedings. The rights of all citizens, both men and women, were also protected by a number of other institutions, even against acts by public authorities.

13. The Libyan legislature had striven to abolish all laws, regulations and customary practices involving discrimination against women. A number of acts had opened to women areas of employment that had been restricted to men, such as the judiciary and the military. The Libyan penal code, as amended, contained no provision involving discrimination against women, and the law provided for special treatment of women, in particular pregnant women, in prisons.

14. With regard to article 3, the Libyan Arab Jamahiriya had adopted numerous legislative and executive measures to ensure the development and advancement of women and to guarantee the practical exercise of their rights and freedoms on a basis of equality with men. In the political field, the Jamahiriya was considered a pioneer in the participation of women on equal terms with men, through the People's Congresses, in legislative decision-making and self-determination. In the social sphere, women participated in women's

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associations as well as belonging to trade unions on an equal basis with men. In the economic area, there was nothing to prevent women from engaging in any occupation or profession, nor did Libyan legislation discriminate between men and women in respect of culture and education.

15. Special legislative and executive measures of the type mentioned in article 4 of the Convention included an act giving women the right to assume judicial posts, the creation of female Basic People's Congresses, and the creation of a military academy for girls. An example of the measures referred to in article 5 was the amendment of school curricula to eliminate schoolbook stereotyping of the roles of men and women. More information would perhaps be provided on such measures in future reports. Female education at all levels and the holding by women of jobs and judicial, political and diplomatic posts which had previously been the preserve of men were indicative of the changing patterns in Libyan society, as was the new freedom with which Libyan women travelled within the Libyan Arab Jamahiriya and abroad.

16. Concerning the questions raised in connection with article 6, traffic in women and the exploitation of prostitution of women were both punishable offences in the Libyan Arab Jamahiriya. Article 6 of the Convention spoke of the suppression of such traffic and exploitation, not of the rights of prostitutes. As fornication was punishable in the Libyan Arab Jamahiriya for men and women alike, there could be no question of a legal regime for prostitution.

17. He apologized for the erroneous reference to artificial insemination in chapter VII of the report; artificial insemination was permissible under Libyan law when necessary, provided that the sperm was obtained from the husband and there was agreement between the couple.

18. The report had not dealt with the political system, but a paper describing it would be circulated. The secretariat of the General People's Congress and those of the Basic People's Congresses were not appointed but elected from among the members of the Congresses in an open procedure that applied equally to men and women.

19. A special programme of consciousness-raising for women existed. It was difficult to ascertain the proportion in which women were represented in the political life of the country; women did, however, participate in the Basic People's Congresses, the General People's Congress and the General People's Committee, the equivalent of a Council of Ministers.

20. The translation into all languages of the final sentence of chapter VIII of the report should read "No female political prisoners exist in the country at the time of writing this report" instead of "No political concentration camps exist ...".

21. Regarding the inquiry about the extent to which women understood their rights in respect of nationality, it should be pointed out that the laws were published in the Official Journal and that any citizen could apply to the authorities concerned on any question that arose in that connection.

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22. Some of the questions relating to the statistics on education and numbers of graduates were valid. Those statistics and the relative drop-out rates at the different levels needed updating and would be dealt with in subsequent reports. Coeducation existed in the Libyan Arab Jamahiriya.

23. On the question of hard and dangerous work that was not appropriate to a woman's nature, such as work in iron and steel plants, the list given in the report was exhaustive. The purpose was more to protect women than to discriminate against them.

24. On the question relating to measures adopted to counter violence against women, he pointed out that Libyan marriage and divorce law prohibited physical and mental coercion of the wife by the husband, and the wife had the right to sue for separation and compensation if her husband used violence against her.

25. Questions had also been raised concerning polygamy. Under Libyan legislation, monogamy constituted the rule, while polygamy was the exception. Taking a second wife was allowable only upon the official written consent of the current wife or an order of the court and provided that the husband's social and economic condition and his health so permitted. Another question had related to the possibility of knowing the views of modern women on polygamy. As was apparent from the explanation just given, it was within the power of the woman, whether modern or not, to accept or refuse.

26. Concerning the question pertaining to marriage between kin, Islam specified degrees of consanguinity within which marriage was prohibited. Cases of marriage to distant relatives, however, did exist, though the Sunna of the Prophet discouraged such unions. It should be stressed that there was no female circumcision. Also, the mention in the report that adoption was prohibited had given rise to a question regarding conflict with the provisions of the Convention on the Rights of the Child. However, that Convention referred to adoption in relation to those countries in which it was permitted. It was prohibited under Islamic law because children could not be given a name other than that of their father. Under the Islamic system of tutelage, however, one could support a child without changing its name.

27. He trusted that the answers thus given constituted the beginning of a fruitful dialogue between the Committee and the Libyan Arab Jamahiriya, and said that efforts would be made in future reports to fill the gaps in the initial one.

28. The CHAIRPERSON said that she had listened with particular interest to the explanations regarding the Shariah as it related to the rights of women or to discrimination against women, and hoped that the next report would give the matter fuller treatment. It was a question on which the United Nations had been asked to prepare a study for the benefit of countries unfamiliar with Islamic law. Since the Libyan Arab Jamahiriya's reservations to the Convention stemmed from provisions of the Shariah which apparently could be interpreted either loosely or restrictively, it was not clear why the reservations had been made at all, and why they were not now lifted.

(The Chairperson)

29. She would like clarification in the next report on the laws regarding inheritance and adoption, and far more details about the de facto status of women in the country, since in any given area, there was always a gap between the de jure and the de facto situation. In the case of the Libyan Arab Jamahiriya, the Constitution and laws seemed very progressive.

30. The right of women to perform military service in defence of their country had been cited as an example of equality between men and women, but she wondered how much attention was given to the rights of women in other fields, once the times of crisis were over.

31. Even though the practice of polygamy was the exception and the first wife must give consent, that custom was still not in keeping with article 16 of the Convention. Also, although article 6 of the Convention was indeed silent on the rights of prostitutes, that and all other articles applied as much to them as to any other woman, and they deserved the same protection.

32. Ms. NIKOLAEVA said that she had received exhaustive responses to her questions and that the Government of the Libyan Arab Jamahiriya seemed to be striving to provide a better life for its citizens.

33. Ms. KHAN observed that other Muslim countries were following the situation of Libyan women with great interest, for their representation in public life served as a model for all.

34. On the whole question of the Shariah, most Muslim countries did not in fact treat it as immutable in every sphere of life (as, for instance, when they established modern banking systems), but rather only in the case of women's rights. Islamic law, wise and progressive in its day seven centuries earlier, was now a source of discrimination against women - the inheritance laws and polygamy being cases in point, not only in the Libyan Arab Jamahiriya but in her own country, Bangladesh, as well. Surely no woman in her senses would willingly give her husband permission to take a second wife; and in a time when households headed by women were common, it was no longer possible to maintain that the inheritance laws were fair because women had no responsibilities. The issue of polygamy would inevitably come to the fore at the forthcoming International Conference on Population and Development, for the practice made population reduction impossible. The time had come for a progressive country like the Libyan Arab Jamahiriya to take the lead in declaring that the Shariah was not immutable when it came to women's rights.

35. Ms. BRAVO de RAMSEY said it was clear that the Libyan Arab Jamahiriya was interested in raising the status of women, which made it all the more inexplicable that women seemed to be given certain rights in some circumstances (especially those involving risk, like military service) but not in others. She imagined that when polygamy was practised, husbands often brought pressure to bear on their wives to consent to their taking other wives. She hoped that the next report would show that women were enjoying a condition of greater equality, and especially that the equality was based on the understanding and support of their spouses.

36. Ms. TALLAWY observed that lawyers' reservations to the Convention based on a certain interpretation of the Shariah posed a serious problem also in her country, Egypt, and a way must be found out of that impasse. Just as Egypt had made a reservation to article 2 of the Convention, the Libyan Arab Jamahiriya had needlessly invoked the Shariah in relation to article 16. Islamic law had, for instance, originally allowed polygamy only in very circumscribed circumstances. Indeed, the Shariah was supposed to be a guarantor of equality for women, as Ms. Khan had pointed out, and was meant to evolve. The true Islamic tradition was that of ijtihad, independent judgement in legal and theological questions, and the door to it should never have been closed. Muslim countries which insisted on a rigid interpretation of the Shariah were doing a grave disservice to Islamic religion.

37. Ms. AOUIJ commended the Libyan Arab Jamahiriya for having one of the most progressive and revolutionary sets of laws in the Arab world, especially as to women's rights in the economic, political and social areas, in contrast for instance to the Maghreb, especially Algeria, where the laws on personal status were retrograde. Public opinion in the Libyan Arab Jamahiriya, however, was opposed to any further forward-looking steps. The people must be made to realize that women had to play an equal role, which could only be assured by law. Moreover, the Shariah was not immutable; Muslim law was meant to evolve, through the application of ijtihad.

38. The Vienna Declaration and Programme of Action had encouraged States to avoid, as far as possible, the resort to reservations to human rights treaties, and any such reservations must regularly be reviewed. It was unacceptable for any country to refuse to change its thinking on the status of women. All doors must be opened to them, in stages if need be, and women must be integrated into modern life. The Libyan Arab Jamahiriya, which differed from other Muslim countries in that women served in public office, should be encouraged to continue taking the lead.

39. The CHAIRPERSON said that the Committee had concluded its consideration of the initial report of the Libyan Arab Jamahiriya.

The meeting rose at 12.10 p.m.